

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1269

Introduced by Senator Galgiani

February 18, 2016

~~An act to amend Section 600 of the Harbors and Navigation Code, relating to vessels.~~ *An act to amend Sections 667.1, 667.5, and 1170.125 of the Penal Code, relating to violent felonies.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1269, as amended, Galgiani. ~~Watercraft.~~ *Violent felonies.*

Existing law, as amended by Proposition 21 as approved by the voters at the March 7, 2000, statewide primary election and by Proposition 83 of the November 7, 2006, statewide general election, classifies certain felonies as violent felonies for purposes of various provisions of the Penal Code. Existing law imposes an additional one-year term for a felony and a 3-year term for a violent felony for each prior separate prison term served for a violent felony. Existing law, as added by Proposition 184, adopted November 8, 1994, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, also imposes additional years of imprisonment in state prison on a person who commits a violent felony and has been convicted of, or who has a prior conviction for, a violent felony. The Legislature may amend the above-specified initiative statutes by a statute passed in each house by a $\frac{2}{3}$ vote.

This bill would additionally define human trafficking as a violent felony subject to the enhanced term of imprisonment.

Because this bill would increase penalties for a violation of human trafficking crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law regulates the operation of watercraft, as defined, in the waterways of the state. Existing law defines a “watercraft” for purposes of those provisions to mean any boat, ship, barge, craft, or floating thing designed for navigation in the water.~~

~~This bill would make nonsubstantive changes in that definition of watercraft.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.1 of the Penal Code is amended to
2 read:

3 667.1. Notwithstanding subdivision (h) of Section 667, for all
4 offenses committed on or after ~~November 7, 2012, January 1,~~
5 2017, all references to existing statutes in subdivisions (c) to (g),
6 inclusive, of Section 667, are to those statutes as they existed on
7 ~~November 7, 2012. January 1, 2017.~~

8 SEC. 2. Section 667.5 of the Penal Code is amended to read:

9 667.5. Enhancement of prison terms for new offenses because
10 of prior prison terms shall be imposed as follows:

11 (a) ~~Where~~ *If* one of the new offenses is one of the violent
12 felonies specified in subdivision (c), in addition to and consecutive
13 to any other prison terms therefor, the court shall impose a
14 three-year term for each prior separate prison term served by the
15 defendant ~~where~~ *if* the prior offense was one of the violent felonies
16 specified in subdivision (c). However, no additional term shall be
17 imposed under this subdivision for any prison term served prior
18 to a period of 10 years in which the defendant remained free of
19 both prison custody and the commission of an offense which results
20 in a felony conviction.

21 (b) Except ~~where~~ *if* subdivision (a) applies, ~~where~~ *if* the new
22 offense is any felony for which a prison sentence or a sentence of
23 imprisonment in a county jail under subdivision (h) of Section

1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or ~~when if the~~ sentence is not suspended for any felony; ~~provided that no felony.~~ An additional term shall *not* be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or ~~when if the~~ sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow mandatory supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.

(c) For the purpose of this section, “violent felony” shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.

- 1 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 2 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 3 Section 289.
- 4 (12) Attempted murder.
- 5 (13) A violation of Section 18745, 18750, or 18755.
- 6 (14) Kidnapping.
- 7 (15) Assault with the intent to commit a specified felony, in
- 8 violation of Section 220.
- 9 (16) Continuous sexual abuse of a child, in violation of Section
- 10 288.5.
- 11 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 12 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 13 violation of Section 264.1.
- 14 (19) Extortion, as defined in Section 518, which would constitute
- 15 a felony violation of Section 186.22.
- 16 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 17 which would constitute a felony violation of Section 186.22.
- 18 (21) Any burglary of the first degree, as defined in subdivision
- 19 (a) of Section 460, wherein it is charged and proved that another
- 20 person, other than an accomplice, was present in the residence
- 21 during the commission of the burglary.
- 22 (22) Any violation of Section 12022.53.
- 23 (23) A violation of subdivision (b) or (c) of Section 11418. The
- 24 Legislature finds and declares that these specified crimes merit
- 25 special consideration when imposing a sentence to display society's
- 26 condemnation for these extraordinary crimes of violence against
- 27 the person.
- 28 (24) *Human trafficking, in violation of Section 236.1.*
- 29 (d) For the purposes of this section, the defendant shall be
- 30 deemed to remain in prison custody for an offense until the official
- 31 discharge from custody, including any period of mandatory
- 32 supervision, or until release on parole or postrelease community
- 33 supervision, whichever first occurs, including any time during
- 34 which the defendant remains subject to reimprisonment or custody
- 35 in county jail for escape from custody or is reimprisoned on
- 36 revocation of parole or postrelease community supervision. The
- 37 additional penalties provided for prior prison terms shall not be
- 38 imposed unless they are charged and admitted or found true in the
- 39 action for the new offense.

1 (e) The additional penalties provided for prior prison terms shall
2 not be imposed for any felony for which the defendant did not
3 serve a prior separate term in state prison or in county jail under
4 subdivision (h) of Section 1170.

5 (f) A prior conviction of a felony shall include a conviction in
6 another jurisdiction for an offense which, if committed in
7 California, is punishable by imprisonment in the state prison or in
8 county jail under subdivision (h) of Section 1170 if the defendant
9 served one year or more in prison for the offense in the other
10 jurisdiction. A prior conviction of a particular felony shall include
11 a conviction in another jurisdiction for an offense which includes
12 all of the elements of the particular felony as defined under
13 California law if the defendant served one year or more in prison
14 for the offense in the other jurisdiction.

15 (g) A prior separate prison term for the purposes of this section
16 shall mean a continuous completed period of prison incarceration
17 imposed for the particular offense alone or in combination with
18 concurrent or consecutive sentences for other crimes, including
19 any reimprisonment on revocation of parole which is not
20 accompanied by a new commitment to prison, and including any
21 reimprisonment after an escape from incarceration.

22 (h) Serving a prison term includes any confinement time in any
23 state prison or federal penal institution as punishment for
24 commission of an offense, including confinement in a hospital or
25 other institution or facility credited as service of prison time in the
26 jurisdiction of the confinement.

27 (i) For the purposes of this section, a commitment to the State
28 Department of Mental Health, or its successor the State Department
29 of State Hospitals, as a mentally disordered sex offender following
30 a conviction of a felony, which commitment exceeds one year in
31 duration, shall be deemed a prior prison term.

32 (j) For the purposes of this section, when a person subject to
33 the custody, control, and discipline of the Secretary of the
34 Department of Corrections and Rehabilitation is incarcerated at a
35 facility operated by the Division of Juvenile Justice, that
36 incarceration shall be deemed to be a term served in state prison.

37 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
38 provision of law, where one of the new offenses is committed
39 while the defendant is temporarily removed from prison pursuant
40 to Section 2690 or while the defendant is transferred to a

1 community facility pursuant to Section 3416, 6253, or 6263, or
2 while the defendant is on furlough pursuant to Section 6254, the
3 defendant shall be subject to the full enhancements provided for
4 in this section.

5 (2) This subdivision ~~shall~~ does not apply ~~when~~ if a full, separate,
6 and consecutive term is imposed pursuant to any other provision
7 of law.

8 *SEC. 3. Section 1170.125 of the Penal Code is amended to*
9 *read:*

10 1170.125. Notwithstanding Section 2 of Proposition 184, as
11 adopted at the November 8, 1994, General Election, for all offenses
12 committed on or after ~~November 7, 2012~~, January 1, 2017, all
13 references to existing statutes in Sections 1170.12 and 1170.126
14 are to those sections as they existed on ~~November 7, 2012~~. January
15 1, 2017.

16 *SEC. 4. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*

25 ~~SECTION 1. Section 600 of the Harbors and Navigation Code~~
26 ~~is amended to read:~~

27 ~~600. As used in this chapter:~~

28 (a) ~~“Watercraft” means any boat, ship, barge, craft or floating~~
29 ~~thing designed for navigation in the water.~~

30 (b) ~~“Nonresident” means a person who is not a resident of this~~
31 ~~state at the time the accident or collision occurs or at the time a~~
32 ~~cause of action or claim for relief arises against him, and also~~
33 ~~means a person who, at the time the accident or collision occurs~~
34 ~~or at the time a cause of action or claim for relief arises against~~
35 ~~him is a resident of this state but subsequently becomes a~~
36 ~~nonresident of this state.~~